IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24493 of 2006
With
SPECIAL CIVIL APPLICATION No. 24494 of 2006
To
SPECIAL CIVIL APPLICATION No. 24497 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD. - Petitioner(s)
Versus
NAGJIBHAI DAMJIBHAI GADESARA - Respondent(s)

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Appearance :
MR PV NANAVATI for Petitioner(s) : 1,MR VIBHUTI NANAVATI for Petitioner(s) : 1,
None for Respondent(s) : 1,
MR DC SEJPAL for Respondent(s) : 1.2.1, 1.2.2,1.2.3
RULE SERVED BY DS for Respondent(s) : 1.2.4,1.2.5

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/07/2007

CAV COMMON JUDGMENT :

1. This group of petitions is filed by New India Assurance Co. Ltd., essentially under Article 227 of the Constitution of India, to challenge the order passed by Motor Accident Claims Tribunal (Main), Bhavnagar, dated 24/8/2006, whereby the Tribunal has granted applications of the claimants seeking amendment in the claim petitions. The claimants have filed M.A.C. petitions under the provisions of section 163-A of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act'] before the M.A.C. Tribunal [Main], Bhavnagar for obtaining compensation for the death and/or injuries suffered by the victims of a vehicular accident. These applications have been given in different proceedings, but since the issue involved is common, the Tribunal decided them by passing common order, which is under challenge. Hence the petitions are heard together and now they are disposed of by this common judgment.

1.1. The claimants have filed petitions wherein initially they averred that the income of the victims was Rs.4,500/- to Rs.5,000/- per month. However, by filing the amendment applications, the claimants said that through inadvertence the income of the victims was shown as Rs.4,500/- to Rs.5,000/- per month and the real income was Rs.3,200/- to Rs.3,300/- per month, which would be Rs.40,000/- per annum. The Insurance company opposed these applications on the ground that such amendment was not permissible and when the income pleaded by the claimants exceeded Rs.40,000/- p.a., claim petition

under section 163-A of the Act was not maintainable. The Tribunal, however, held that the petitioner's objection was not sustainable and the amendment was required to be granted.

1.2. The petitioner has objected the amendment on the ground that when admittedly the income exceeded Rs.40,000/- per annum, the claimants cannot be allowed to restrict the claim to Rs.40,000/- and avail the remedy under section 163-A of the Act. According to the petitioner, claim petitions under section 163-A of the Act are not maintainable.

2. I have heard Mr. VP Nanavati, learned advocate for the petitioner and Mr. DC Sejpal, learned advocate for respondents. Mr. Nanavati has submitted that the impugned order is against the settled proposition of law laid down by the Apex Court as well as different High Courts including this Court and, therefore, it is required to be quashed and set aside. He has submitted that when the claim is filed on the basis of income exceeding Rs.40,000/- p.a., the claimant cannot be permitted to reduce the income so as to avail the benefit of section 163-A of the Act. It is his submission that provisions of section 163-A of the Act are meant for expeditious remedy for a particular class of persons whose annual income does not exceed Rs.40,000/-. He has submitted that the claimants who have filed the claim petitions on the basis of the income of the victims above Rs.40,000/- p.a., their petitions under section 163-A were not

maintainable and only course open for them was to have inquiry or trial under section 166 of the Act. He has placed reliance on several judicial pronouncements to support his submissions.

2.1. As against that, Mr. DC Sejpal, learned advocate for the respondents – claimants has submitted that even when the claimants initially stated the income exceeding Rs.40,000/- p.a., in claim petitions, they were legally entitled to amend the petitions and reduce the income. He has cited certain decisions to support his submission.

3. I have carefully considered the submissions of the learned advocates. I have also carefully perused the record of the petitions. There is no dispute that when the claimants filed the claim petitions under section 163-A of the Act, they have stated that the victims were earning Rs.4,500/- to Rs.5,000/- per month. However, subsequently, applications for amendment to the claim petitions have been submitted wherein the averment with regard to the income is sought to be amended. It is stated in the applications that due to improper and disturbed frame of mind, the claimants inadvertently mentioned the income of the victims as Rs.4,500/- to Rs.5,000/- p.m., but the real income is Rs.3,200/- to Rs.3,300/- p.m. The proceedings are filed under section 163-A of the Act and they are pending for final disposal. The question for my consideration is whether the claimants can be permitted to amend the claim petitions and effect

change in the averments made in the petitions in relation to the income of the victims.

3.1. Since controversy is also touching provisions of section 163-A of the Act, it is necessary to have a bird's eye view of it. Section 163-A is contained in Chapter XI of the Act. It is enacted for grant of immediate relief to a section of people whose annual income is not more than Rs.40,000/-. The amount of compensation payable to the victims or the dependents of the victims is based on the structured formula. When the Tribunal is required to determine the compensation under section 163-A of the Act, it is not required to decide the negligence of the tort-feasor, but has to determine the compensation in accordance with the table contained in the Second Schedule to the Act. This way the petition under section 163-A can be disposed of expeditiously without making the claimants to wait for getting the compensation for years together. However, if the income of the victim exceeds Rs.40,000/- p.a., petition under section 163-A of the Act cannot be entertained by the Tribunal and the claimant has to file the proceedings under section 166 of the Act which envisages detailed inquiry in the claim made by the claimants.

3.2. In the instant case, when the claimants preferred the petitions, they averred that the income of the victims was Rs.4,500/- to Rs.5,000/- per month which exceeded limit of Rs.40,000/- p.a. Obviously therefore, the petitioner challenged the maintainability of the petitions under section 163-A of the Act. The claimants, however, submitted amendment applications stating

that due to circumstances mentioned therein, inadvertently the income was stated to be Rs.4,500/- to Rs.5,000/- p.m., but the real income was Rs.3,200/- to Rs.3,300/- p.m. It is the say of the petitioner that even such amendment pending the proceedings is not permissible. This contention of the petitioner does not appeal to me. No-doubt remedy under section 163-A of the Act is meant for section of people whose income does not exceed Rs.40,000/- p.a. But when the claimants who initially averred that the income was around Rs.60,000/- p.a., subsequently seek to amend the pleadings and state that the real income was Rs.3,200/- to Rs.3,300/-meaning thereby within the permissible limit, the claimants cannot be prevented from bringing about such amendment. It is a matter of common knowledge and judicial notice can also be taken of the fact that in the claim petitions which are normally filed under the legal advice, there is a tendency to inflate the claim with a view to seek more compensation. There is every possibility that in the process the claimant would state higher income than the income actually received. But when such claimant who desires to resort to expeditious remedy under section 163-A, realising the implication of the claim made on the basis of the inflated income, may amend the averment and plead that his real income is lesser than what was originally claimed by him. When the proceedings have not travelled beyond the stage of pleadings, I do not see any reason why the claimants cannot be permitted to amend the mistake and state the correct figure of the income.

3.3. According to Mr. Nanavati, once the claim petition is filed, making an averment that the income is more than Rs.40,000/- p.a., the claim has to be inquired into under section 166 of the Act and claimant cannot be permitted to reduce the income so as to avail the remedy under section 163-A of the Act. To support his submission, he has placed reliance on the decision rendered by the Apex Court in the case of Deepal Girishbhai Soni v/s. United Insurance Co. Ltd., reported in 2004 (2) G.L.R. At page 1597. It is held by the Apex Court in the said decision that remedy for compensation under section 163-A and section 166 of the Act is independent of each other. The claimant must opt or elect to go either for a proceedings under section 163-A or under section 166 of the Act, but not under both. Mr. Nanavati has placed reliance on the observations made by the Apex Court in para. 42 of the judgment, which are as follows :-

> "42. Chapter XI was thus enacted for grant of immediate relief to a section of people whose annual income is not more than Rs.40,000/- having regard to the fact that in terms of Sec. 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income, but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of

> compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos. 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the Motor Vehicle or any other fault arising out of use of a Motor Vehicle."

Thus after explaining the object of enacting section 163-A, the Apex Court has held that whose annual income is not more than Rs.40,000/-, having regard to the fact that in terms of section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only with regard to age of the victim and his income, but also the other factors relevant therefor and it is for grant of immediate relief to particular category of claimants and award made thereunder shall be in full and final settlement of the claim. The same is not interim in nature.

3.4. Mr. Nanavati has also drawn my attention to para. 51 of the said judgment, which reads as under :-

> "51. The scheme envisaged under Sec. 163A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not be

altered or varied in any other proceedings. It does not contain any provision providing for set-off against a higher compensation unlike Sec. 140. In terms of the said provisions, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000/- or less is covered thereunder whereas Secs. 140 and 166 cater to all sections of society."

He has further drawn my attention to para. 67 of the said judgment, which reads as under :-

"67. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Sec. 163A, the annual income of Rs.40,000/- per annum shall be treated as a cap. In our opinion, the proceeding under Sec. 163A being a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

3.5. Placing reliance on above observations, Mr. Nanavati has submitted that the Apex Court has clearly said that the amount of compensation payable under section 163-A of the Act is not to be altered or varied in any other proceedings. According to him, the claimants therefore cannot be permitted to amend the claim. I do not agree with the submission of Mr. Nanavati. The Apex Court has brought out the distinction between section 163-A of the Act on one hand and section 140 & section 166 of the Act on the other.

According to the Apex Court, the award under section 163-A is final and conclusive and the amount awarded under the said proceedings cannot be altered or varied in any other proceedings unlike compensation awarded under section 140 of the Act. Award under section 140 of the Act is interim award, which is to be given set-off against higher compensation when the final award is made under section 166 of the Act. The Apex Court has not said that when the claim petition filed under section 163-A of the Act is pending adjudication by the Tribunal, the claimant cannot be permitted to amend the averment in the petition with regard to the income.

3.6. Mr. Nanavati has placed reliance on the decision of the Karnataka High Court rendered in the case of United India Insurance Co. Ltd. V/s. Anita reported in 2007 A.C.J. 251. In the said decision the Karnataka High Court has held that when the claim petition is filed under section 166 of the Act and when it is found that the claimant's income is more than Rs.40,000/- p.a., the claimant cannot be permitted to convert the petition under section 163-A of the Act by varying the income to Rs.40,000/-. The Karnataka High Court has placed reliance on the decision rendered in the case of Deepal Soni [supra]. The decision of Karnataka High Court cannot be of any help to the petitioner. The basic difference between the facts of that case and case on hand is that in that case the petition was filed under section 166 of the Act and in the inquiry, finding given by the Tribunal was that the income of the claimant was more than Rs.40,000/- p.a. At that stage the claimant sought to convert the petition

under section 163-A of the Act by limiting the income to Rs.40,000/-. The Karnataka High Court, therefore, held that such alteration in the claim cannot be permitted. In the instant case, the facts are quite different. The claim petitions are filed under section 163-A of the Act. The pleadings have been submitted by the parties. There is no finding given by the Tribunal with regard to the income. The claimants merely sought the amendment in the claim petitions qua the averment with regard to the income of the victims. Such amendment does not amount to converting the petition from section 166 of the Act to one under section 163-A of the Act. Therefore, the ratio laid down by the Karnataka High Court is not at all applicable to the present case.

3.7. Similarly Mr. Nanavati has placed reliance on decision of the High Court of Punjab & Haryana in the case of Himachal Road Transport Corporation v/s. Baldev Kumar Nayyer & ors. reported in 2007 A.C.J. 678. In that case also the petition was filed under section 166 of the Act and the claimants sought conversion of the petition under section 163-A of the Act by limiting the income to Rs.40,000/-. The request was granted by the Tribunal and the case was decided accordingly. But the Punjab & Haryana High Court held that in view of the decision of the Apex Court in Deepal Soni's case [supra], the claimant could not have been permitted to convert the petition under section 163-A of the Act and remanded the matter for fresh adjudication under section 166 of the Act. As stated above, the present proceedings are

under section 163-A of the Act and the claimants have sought amendment in the claim petition itself. The facts in the present case clearly show that during the inquiry under section 166 of the Act, the income of the victim is found to be exceeding Rs.40,000/-, but the claimants have been permitted to limit the income to Rs.40,000/- so as to bring the case within the purview of section 163-A of the Act. The Tribunal in the cases on hand will definitely not travel beyond averments made in the claim petitions and will not permit the claimants to plead case outside the scope of the petitions. Therefore, the upper limit pleaded by the claimants in the claim petitions will not exceed Rs.40,000/- p.a. There is no question of any finding given by the Tribunal holding the income of the claimants more than Rs.40,000/- p.a., and the claimants seeking permission to restrict the income to Rs.40,000/- p.a. In view of the same, I do not see how this decision can also help the petitioner.

3.8. Mr. Nanavati has also cited judgment of the Division Bench of this Court rendered in the case of New India Assurance Co. Ltd. V/s. Monghiben Membhai Ayer in First Appeal No. 921 of 2002 dated 30/4/2007. The Division Bench has observed in para. 7.1 as under:-

> "7.1. On a plain reading of the above Section, it is very clear that it provides for special provisions as to the payment of compensation on a structured-formula basis. The legislative intent behind the enactment of the said Section was to provide for the making of an award consisting of

a predetermined sum, without insisting on a long-drawn-out trial or without proof of negligence in causing the accident. The said Section is subject to the Second Schedule appended thereto and provides for the grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/-."

Again in para. 9, it has observed as under :-

"9. As discussed hereinabove, Section 163-A of the M.V. Act r/w the Second Schedule appended thereto, provides for the grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/-. Though a person applying or claiming compensation u/s. 163-A of the Act can claim more compensation than the said amount but the Tribunal cannot award compensation beyond what is contemplated and prescribed in the Second Schedule. In the case on hand, evidently, the Tribunal has assessed the annual income of the victim to be beyond Rs.40,000/- per annum. In our opinion, the Tribunal has committed serious error in law by awarding compensation which is of an amount, must higher than what is prescribed under Section 163-A r/w the Second Schedule appended thereto."

The Division Bench has held that the award made by the Tribunal showed that the Tribunal had assessed annual income of the victim to be beyond Rs.40,000/- p.a., inspite of that the award was made under section 163-A of the Act. Therefore, the Tribunal had committed serious error. There is no disagreement with the ratio laid down by the Division Bench of this Court. Obviously when the finding is that the claimant's income is more than Rs.40,000/- p.a., the case has to be decided in accordance with the provisions of

section 166 of the Act and no award can be made under section 163-A of the Act. But ratio laid down in this case cannot be applied to the facts of the present case. As aforesaid, finding with regard to income is yet to be given by the Tribunal. The proceedings do not seem to have travelled beyond the stage of filing of the pleadings. The claimants have not limited their income to Rs.40,000/- p.a., but they have pleaded that their actual monthly income is Rs.3,200/- to Rs.3,300/-. Therefore, there is no possibility for the Tribunal to hold that the income of the claimants is more than Rs.40,000/- p.a. The pleadings are required to be proved by leading evidence.

3.9. In the decision relied on by Mr. Sejpal rendered by the High Court of Karnataka in the case of Sharabai v/s. P. Sahebkhan reported in 2006 A.C.J. 229 it has been held by the Division Bench of Karnataka High Court that the pleadings of a party can never be placed on the pedestal of law. It has observed as under:-

> "6. Admittedly, the appellants-claimants made application only under section 163-A of the Act. The argument of the learned counsel for the insurance company is that since in the said application it was claimed by the claimants that the deceased was earning yearly income of Rs.1,00,000/- and since that income is more than Rs.40,000/-, the application filed by them is not maintainable and that application ought to have been treated as the one filed under section 166 of the Act and dealt with accordingly. This submission is not acceptable to us for more than one reason. The pleading of a party can never be placed on the pedestal of a law. Simply because claimants have under a wrong

perception or appreciation of the facts asserted a fact which they cannot prove, that circumstance itself without anything further has no legal efficacy to determine the jurisdiction of the M.A.C.T. The jurisdiction of the M.A.C.T., is determined by the law and not by pleading of a party who invokes its jurisdiction. Be that as it may, it is not a finding of M.A.C.T., that the yearly income of the deceased was more than Rs.40,000. On appreciation of oral and documentary evidence, the Claims Tribunal has recorded a finding that the deceased was earning only Rs.2,400 per month. That means that the deceased was earning Rs.28,800 per annum. Therefore, we hold that the Tribunal had jurisdiction to entertain the application filed by the appellants-claimants under section 163-A of the Act and that in entertaining that application the M.A.C.T has not committed any illegality as contended by the learned Standing Counsel for insurance company."

4. It is clear from the above that even when the claim is made on the basis of the income which is higher than Rs.40,000/- p.a., a petition under section 163-A can be maintainable if the Tribunal gives a finding that the income of the claimant was below Rs.40,000/- p.a. In the present case, in the pleading itself now it is sought to be canvassed by the claimants that the income of the victims was not more than Rs.40,000/- p.a. The proof thereof is yet to be given by the claimants. It, therefore, appears that the claimants of the cases on hand are better placed than the claimants of the case before the Karnataka High Court.

5. In view of the aforesaid, I am clearly of the opinion that the

Tribunal has not committed any error in granting the amendment. These petitions, therefore, have no merit and they are dismissed. Rule discharged. Interim relief stands vacated.

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It is requested on behalf of Mr. Nanavati, after pronouncement of judgment, to extend the stay granted earlier for a further period of six weeks. Considering the facts and circumstances of the case, request is not granted.

[Akshay H Mehta, J.]

* Pansala.